

UNITED STATES DISTRICT COURT

Northern District of California

Oakland Division

DIANE MCKINZY,

No. C 10-01866 CW (LB)

Plaintiff,

v.

**ORDER RE DEFENDANT'S JULY 6,
2011 DISCOVERY LETTER**

NATIONAL RAILROAD PASSENGER
CORPORATION, *et al.*,

[ECF No. 58]

Defendants.

The district court has referred discovery in the above-captioned matter to the undersigned, United States Magistrate Judge Laurel Beeler. ECF No. 45.¹ On July 6, 2011, Defendant National Railroad Passenger Corporation ("Amtrak") filed a letter requesting the court's assistance in facilitating a meet-and-confer session with Plaintiff Diane McKinzy and/or permitting Amtrak to file a motion to compel. ECF No. 58 at 2. In its letter, Amtrak details its attempts to contact McKinzy. *Id.* at 2; 6/28/2011 Letter from Nguyen to McKinzy, ECF No. 58-1 at 33. The court appreciates the efforts undertaken by Amtrak to comply with the procedures set forth in the court's standing order.

However, the district court's fact discovery deadline was June 28, 2011. Minute Order and Case Management Order, ECF No. 13 at 1. Amtrak filed its letter on July 6, 2011 or eight days after the close of fact discovery. ECF No. 58 at 1. Local Rule 37-3 requires any motion to compel to be filed within seven days of the close of discovery. Amtrak must receive permission *from the district court*

¹ Citations are to the Electronic Case File ("ECF") with pin cites to the electronic page number at the top of the document, not the pages at the bottom.

1 to bring a motion to compel outside the date given by Local Rule 37-3 and the district court's case
2 management order. *See, e.g., Spilsbury v. Target Corporation et al.*, No. 09-cv-05955-EJD (HRL),
3 ECF No. 117 (Feb. 28, 2011) (magistrate judge's order denying without prejudice motions to
4 compel filed more than seven days past the discovery cut-off and referring administrative motions
5 for leave to file late motions to district court). The court also notes that Amtrak filed a motion for
6 summary judgment on all of McKinzy's claims. ECF No. 48 at 7. This calls into question the
7 current necessity of Amtrak's requested relief.

8 The court **DENIES** without prejudice Amtrak's requests as untimely. The court suggests that
9 Amtrak may want to defer applying to the district court for leave to file an untimely motion until
10 *after* the district court rules on Amtrak's summary judgment motion. If the district court grants
11 Amtrak permission to file an untimely motion, Amtrak then may renew its requests before the
12 undersigned.

13 **IT IS SO ORDERED.**

14 Dated: July 11, 2011



LAUREL BEELER
United States Magistrate Judge